

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 7, Section 3291(f)(1)
of the General Industry Safety Orders

Permanent Rooftop Installations – Use of Roof Tie-backs on Buildings**SUMMARY**

The Occupational Safety and Health Standards Board (Board) granted a Permanent Variance to High Bluff Holdings, Inc. (OSHSB File No. 00-V-012) on July 20, 2000 regarding GISO Section 3291(f)(1). This Section requires permanent eyebolts or other permanent devices to be installed on all buildings 3 stories or 36 feet or more in height for the purpose of securing suspended scaffold hooks or clamps and safety lines. An exception to this regulation (No. 2) exempts buildings up to 4 stories or 48 feet in height when certain conditions are met.

Recent experience with OSHSB Variance File No. 00-V-012 indicates that the Division of Occupational Safety and Health (DOSH) interprets the exception as indicated above to mean 4 stories and 48 feet (emphasis added) in height. As a result, an applicant with a building that was 4 stories and 54 feet in height had to apply for a variance. In this case, the applicant planned to use a ground supported aerial device to elevate exterior building maintenance people including window cleaners, to do any outside building work. The applicant had no plans of using a suspended scaffold which would require safety hooks, clamps and safety lines.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

The purpose of this rulemaking proposal is to amend Exception No. 2 to Section 3291(f)(1) in order to clarify the intent of the regulation, which is to exclude buildings from the requirements of 3291(f)(1) when they are either up to 4 stories or 48 feet in height.

Section 3291. Special Design Considerations-Permanent Roof Top Installations

Section 3291 addresses requirements pertaining to the design and installation of permanent rooftop installations including, but not limited to: use of a civil or mechanical engineer to prepare calculations, use of sleeves for buildings that are designed with eyebrows, sleeve design, use of

roof davit systems, use of outrigger beams, use of roof tie-backs, use of an Operating Procedures Outline Sheet (OPOS), and procedures for parapets of excessive height.

Section 3291(f) addresses spacing of roof tie-back devices, design specifications and anchorage requirements. Subsection (f)(1) specifies that every building that is 3 stories or 36 feet or more in height shall be provided with eyebolts or other permanent devices installed at the roof level for the purpose of tying back suspended scaffold hooks or clamps and safety lines.

Subsection (f)(1) contains two exceptions to the foregoing requirement. Exception No. 2 states that eyebolts for roof tie-back systems are not required on buildings constructed up to 4 stories or 48 feet in height when building maintenance can be accomplished using extension tools, ladders, approved ground equipment such as scaffolds, or aerial devices designed and used for positioning personnel.

A revision is proposed to amend Exception No. 2 to Section 3291(f)(1) to read, "Roof tie-backs are not required on buildings that are either up to 4 stories or that are 48 feet in height ...". The proposed revision is necessary to clarify to the employer that roof tie-back systems are not required on buildings that are either up to 4 stories or that are 48 feet in height. The proposed revision recognizes that the term "4 stories" does not automatically equate to 48 feet in height.

DOCUMENTS RELIED UPON

Occupational Safety and Health Standards Board Variance Decision (OSHSB File No. 00-V-012) dated July 20, 2000 on behalf of High Bluff Holdings, Inc.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. This proposal merely makes a technical, clarifying revision to existing Title 8 regulations and has no new or added effect upon employers.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state. No state agencies or employees are engaged in operations involving exterior building maintenance, a service which is generally contracted out on an “as needed” basis.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose non-discretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.